

### **REMARKS/ARGUMENTS**

This is in response to the official action dated August 31, 2007. Reconsideration is respectfully requested.

#### **Claim objections**

The Examiner rejected claim 7 as being in improper form because a multiple dependent claim cannot depend upon another multiple dependent claim.

Applicants submit that a Preliminary Amendment had been submitted concurrently with the application. It appears to Applicants that the Examiner overlooked the Preliminary Amendment, because she only addressed claims 1-7, which were the claims of the application. In the Preliminary Amendment, claims 1-7 were amended and claims 8-18 were added. All multiple dependencies were amended in the Preliminary Amendment.

#### **Claim rejections under 35 USC § 102**

The Examiner rejected claims 1, 2, and 4 as being as anticipated by Chasen (US 2003/0126986). The Examiner rejected claims 1, 2, 4, and 5 as being anticipated by Kvietok et al., (WO 03/077962).

Applicants submit that neither Chase, nor Kvietok provide a dispensing device which includes in connection with the refill a switch and the closure means which, when the refill is fitted, enables the actuator device in a material-dispensing manner by using a switch which includes a radio frequency transmitter and receiver circuit capable of transmitting a signal. Neither does their closure means include a metallic coil capable of resonating in sympathy with the signal and emitting a return resonant signal which is actuator device enabling. The presently amended independent claim includes such limitation.

Anticipation requires identity of invention. *See* MPEP 2131. *See also* *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik*

*GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). There must be no differences between what is claimed and what is disclosed in the prior art reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967.) Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990).

Thus, since the amended claim is not identical with any of the cited references, Applicants respectfully submits that the rejection should be withdrawn.

**Claim rejections under 35 USC § 103**

(1) The Examiner rejected claim 3 as being obvious over either Chasen or Kvietok et al. Similarly to what was discussed above, Applicants amended claim 1 and consequently claim 3, which is directly dependent on claim 1. Pursuant to MPEP 2142, "to reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." If the Examiner would examine amended claim 1 and dependent claim 3, as amended and apply the standard discussed above, she would not arrive to the conclusion that the claim is obvious, because nothing in the references, either alone or in combination, would allow the person of ordinary skill in the art to view of claims as being suggested by the references either alone or in combination, because the references never suggest that a switch would include a radio frequency transmitter and receiver circuit capable of transmitting a signal, and that the closure means would include a metallic coil capable of resonating in sympathy with the signal and emitting a return resonant signal which is actuator device enabling.

Accordingly, claim 3 is patentable over the prior art of record. Applicants submit that the rejection should be withdrawn.

(2) The Examiner rejected claim 6 as being obvious over either Chasen or Kvietok et al, both in view of Liefke (US 4,308,011). Claim 6 has been canceled. Although the limitation of having a switch including a radio frequency transmitter and receiver circuit capable of transmitting a signal, and a closure means comprising a metallic coil capable of resonating in sympathy with the signal and emitting a return resonant signal which is actuator device enabling, has been integrated in claim 1, Applicants submit that the Examiner would resort to "hindsight" based upon applicants' disclosure. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. Viewing the claimed invention, the person of ordinary skill in the art would not consider the combination as claimed obvious. Thus, Applicants submit that the references in combination do not render any aspect of the invention as obvious.

Applicants submit that the claims as amended are patentable.

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,  
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